

EDITORIAL

JOHN PERRETT : EXECUTIVE OFFICER



Welcome to the latest and final TAS Talk for 2010. In this edition we consider some of the current issues arising from national reforms in housing. There are also articles focusing on practical matters affecting tenants. The staff here at TAS wish everyone a safe and memorable Christmas and New Year and we look forward to assisting you in 2011.

TENANCY TALK POLICY & LAW REFORM

Residential Tenancies Act 1987 (WA) Update

TAS is awaiting the introduction of the Bill into State Parliament to amend the Residential Tenancies Act, 1987. The review into the operations of the Act has been dragging on for many years and consumer access to improved protection is well overdue. Once introduced into the Parliament, TAS will be reviewing the amendments to ensure they reflect the expectations of the tenant network. Where the proposed changes in this Bill fall short of our suggestions or expectations, we will embark on lobbying with all parties and recommend further amendments to the Bill.

Boarders and Lodgers Forum and Working Group

Once again, the plight of Boarders and Lodgers in Western Australia is a concern. Due to a distinct lack of clarity, many boarders and lodgers in Western Australia are confused as to what their legal rights and interests are. Over the past ten years, there have been many attempts to seek regulation of this sector but these initiatives have not resulted in satisfying our concerns. Earlier this year, TAS and Shelter WA jointly organised an inter-agency meeting to gauge the interest in forming an inter-agency coalition in support of boarders and lodgers reforms. One outcome of that meeting was the creation of a Boarders and Lodgers Working Group. The Group decided to convene a forum addressing the consumer rights of boarders and lodgers and this was held on International Tenancy Day (4 October 2010) at Curtin University. The forum was successful with over 70 people in attendance. The Working Group has met since then and is looking at purpose and strategies that will aid in the delivery of legal reforms.

Unfair Contract Terms

From 1 July 2010, unfair contract terms provisions engendered by Commonwealth Law have applied to standard form contracts used by corporations. All State and Territory jurisdictions intend to introduce the complete new Australian Consumer Law. Thus, a single, national consumer law will be in force from 1 January 2011. This means unfair contract terms provisions will then apply to standard form contracts by sole traders and partnerships from that date. TAS is currently looking at the impact the unfair contract terms laws have on tenancy agreements.

Indigenous Housing Need

The Australian Government has made housing a priority and the National Partnership Agreement (NPA) on Social Housing provides increased financial assistance to the States and Territories in meeting program targets. The NPA on Remote Indigenous Housing supports the outcome of standardised tenancy management for remote Indigenous communities.

The WA Aboriginal Housing Legislation Amendment Act 2010 was approved in July 2010. It enables the Department of Housing to provide new investment and a legal framework for property and tenancy management services in remote Aboriginal communities, when the governing community body signs a Housing Management Agreement. TAS is particularly concerned in regards to the practical effect of implementing the Residential Tenancies Act 1987 (WA) (RTA) in remote areas of the State. These concerns include the perceived unequal bargaining power between the Department and individual communities, the cost and availability of tradespeople to fulfil maintenance, health and safety requirements under the RTA, timely access by tenants to legal assistance and legal remedies in the remote areas and the consequences of terminations. TAS will be monitoring these issues.



**Protecting
Tenants' Rights**

www.taswa.org

Bond Forms - Inadequacy

It has been brought to our attention that there is a deficiency with Form 4 – Joint Application for Disposal of Security Bond – of the RTA regulations. Some tenants (ie. Cultural and Linguistic Diversity tenants) will be disadvantaged in signing the disposal of security bond form at the end of the tenancy as the form is unclear in regards to deductions from the bond by the owner or property manager. TAS suggests that the landlord should clearly state an itemised claim against the bond on the form and provide evidence for the claim. TAS will be making a submission to the Department of Commerce outlining the suggested changes.

NETWORK NEWS

NEWS FROM AROUND THE TENANCY NETWORK

State Tenancy Conference

TAS together with the Tenants Network (WA) is organising the State Tenancy Conference, which will take place on the 7th and 8th December 2010. This two full day conference will engage relevant organisations who are involved in housing and tenancy issues. Full details - including a registration form and programme outline - are available at www.taswa.org/statetenancyconference.

Non-Government Housing Alliance Group

[Community Housing Coalition of WA](#), [Shelter WA](#), and [Tenants Advice Service](#) facilitated the NGO Affordable Housing Alliance Meeting on 12 October 2010. The meeting discussed what other opportunities for greater input into government policy development and for larger organisations to advocate for smaller organisations. CHCWA, Shelter WA and TAS are formulating an action plan to guide the efforts of the NGO Housing Alliance.

Housing Advisory Roundtable (HART)

TAS has a seat at the HART in collaborating and cooperating with major stakeholder groups that have a direct stake in social housing. HART was formed to engage with peak bodies and advocacy organisations on key social housing policy issues affecting Western Australians. Amongst the other objectives HART provides advice to the Department of Housing's Director General on the National Affordable Housing Agreement's National Partnership Agreements on homelessness, social housing and remote indigenous housing.

COMMUNITY LEGAL EDUCATION

THE LATEST COURSE & EVENT INFORMATION

For details on the last training sessions available for 2010 please refer to the Training Calendar section of the TAS web site. This section can be found at www.taswa.org/trainingcalendar.

The first semester training program for coming year will be made available in late January 2011.

TENANCY TIPS

MAINTENANCE & REPAIRS : MOULD

(Ref: [Mould & Condensation In Your Home Fact Sheet](#) – [Department of Health WA](#))

There have been an increased number of tenants that face mould problems at their rental property, especially in the months after winter (particularly in August and September). There is often confusion as to who is responsible for removing the mould in the property.

Mould can cause serious health effects as toxic moulds produce mycotoxins and some studies claimed that exposure to high levels can lead to neurological problems and in some cases death. Mould can be prevented by ventilation of the property, maintaining a low constant heat to keep indoor moisture low and insulation of hot and cold surfaces to prevent condensation. There are several treatments available for removing mould. Do not dry brush the mould area as this can release the spores into the air and spread the mould further as well as cause allergic reaction in some people. Bleach is also ineffective in killing mould as bleach has a high pH, it simply bleaches it so it looks like it has disappeared.

Under s42 of the Residential Tenancies Act 1987 (WA), it is a term of every agreement that an owner will provide and maintain the premises in a reasonable state of cleanliness and shall comply with all requirements in respect of buildings, health and safety under any other written law in so far as they apply to the premises. Under s38, the tenant is responsible for keeping the premises in a reasonable state of cleanliness and that they will not intentionally or negligently cause or permit damage to the premises.

The owner may be responsible for mould in the property if the mould was caused by the owner's failure to maintain the property, or comply with all requirements in respect of buildings health and safety as they apply to the premises. This can include failure to fix a leaking pipe, structural issues and poorly structured homes. The tenant may be responsible for mould if it is caused by the tenant's negligence or failure to keep the premises in a reasonable state of cleanliness. This can include failure to ensure there is ventilation in the property. Causes of mould can be difficult to detect by either owners or tenants. For further information, the tenant or owner should contact the Local Government Environmental Health Officer in the first instance or the Environmental Hazards Unit of the Environmental Health Directorate on (08) 9388 4999.

The Health Act 1911 (WA) s182(3) is relevant to the issue of mould if “a nuisance will be deemed to be created where any house or premises is in such a state as to be a nuisance or injurious or dangerous to health”. Both the owner and tenant can be held jointly and severally liable under the Health Act 1911 (WA).

If there is a mould problem in the property, it should first be established whether the mould is hazardous to the tenants’ health. Secondly, it is important to determine if the mould has grown due to the owner’s breach of s42 of the RTA or the tenants’ breach of s38 of the RTA. If it is the owners’ breach, the tenant must notify the owner of the breach in writing. If the owner does not act or if the mould is hazardous to the occupants’ health then the tenant should contact the local council or seek legal advice. For legal assistance, please contact Tenants Advice Service at 9221 0088 (Metro Advice Line) or 1800 621 888 (Country Advice Line). Community Workers can call TAS on (08) 9221 9499 for advice on tenancy issues affecting their clients.

The [Mould Fact Sheet](#) is available at the [Department of Health](#) web site.